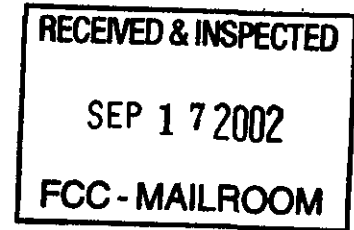


Before the
Federal Communications Commission
Washington, DC 20554



In the Matter of)	
)	
Request for Waiver by)	
)	
Scottsdale Horizons School)	File No. SLD-260237
Scottsdale, Arizona)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45 ✓
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: September 12, 2002

Released: September 13, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Waiver Request filed by Scottsdale Horizons School (Scottsdale), Scottsdale, Arizona.¹ Scottsdale seeks a waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny Scottsdale's Waiver Request.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.³ The Administrator must post the FCC Form

¹ Letter from Judy White, Scottsdale Horizons School, to Federal Communications Commission, filed March 6, 2001 (Waiver Request).

² See Waiver Request. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. See 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. § 54.504(b)(1), (b)(3).

470 on its website, and the applicant is required to wait 28 days before making a commitment with a selected service provider.⁵ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁶ The Commission's rules allow the Administrator to implement an internal filing period ("filing window") for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received.⁷ Applications that are postmarked outside this filing window are subject to separate funding priorities under the Commission's rules.⁸ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window.

3. Scottsdale requests a waiver of the Funding Year 4 application window, which closed on January 18, 2001 at 11:59 p.m. Eastern Standard Time.⁹ Scottsdale asserts that, after mailing its "package" to the Administrator on January 18, 2001, it realized later that day that it had omitted necessary information.¹⁰ Scottsdale states that it attempted to submit online its FCC Form 471 with the necessary information that evening, but at 10:00 p.m. Pacific Standard Time on January 18, 2001, received a notice that the SLD website was "unavailable for routine maintenance," and was therefore unable to complete its application.¹¹ Scottsdale explains that it printed the signature page and mailed it along with other required documents at 11:37 p.m. Pacific Standard Time that night.¹² Significantly, SLD records reflect that although Scottsdale mailed the required attachments and certification to SLD, Scottsdale did not mail a completed FCC Form 471.¹³ Scottsdale completed and submitted the electronic online application at approximately 4:30 a.m. on January 19, 2001.¹⁴

⁵ 47 C.F.R. §§ 54.504(b)(3) and (4); § 54.511.

⁶ 47 C.F.R. § 54.504(c).

⁷ 47 C.F.R. § 54.507(c).

⁸ 47 C.F.R. § 54.507(g).

⁹ Waiver Request; SLD web site, What's New (November 2, 2000) <<http://www.sl.universalservice.org/whatsnew/112000.asp#110200>>. Therefore, in Funding Year 4, applicants had to postmark the FCC Form 471 by midnight on January 18, 2001.

¹⁰ Waiver Request.

¹¹ *Id.* This notice is the standard notice used for closing the SLD website for a certain period of time.

¹² *Id.*

¹³ Under program rules, applicants must either file the completed FCC Form 471 online, or mail (i.e., postmark) the completed FCC Form 471, by the close of the filing window. *See, e.g.* SLD website, What's New (November 2, 2000) <<http://www.sl.universalservice.org/whatsnew/112000.asp#110200>>.

¹⁴ *Id.*

Scottsdale states that it believed that it could file its application as late as 12:00 p.m. Pacific Standard Time on January 18, 2001.¹⁵

4. We conclude that Scottsdale has not demonstrated a sufficient basis for waiving the Commission's rules. Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹⁶ In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of getting its forms and other information to SLD for processing within the established deadline if the applicant wishes to be considered with other in-window applicants.

5. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. Notwithstanding Scottsdale's contention that it believed it had until midnight local time to file its FCC Form 471 online, the Administrator's procedures clearly stated that the online filing window closed at 11:59 Eastern Standard Time, which is 8:59 Pacific Standard Time.¹⁷ This uniform deadline of 11:59 p.m. Eastern Standard Time provides a deadline for electronic filing that treats all applicants equally. Scottsdale was on notice well in advance of the filing deadline that the filing window for Funding Year 4 would close at 11:59 Eastern Standard Time on January 18, 2001, but failed to submit its properly completed application in time, either by filing online before that time, or by mailing its completed FCC Form 471 before midnight, Pacific Standard Time.¹⁸ Although it mailed certain documentation before midnight Pacific Standard Time, it failed to file online, or mail with postmark, the properly completed FCC Form 471 itself.

6. In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of complying with all relevant rules and procedures.¹⁹ In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its application materials if it wishes to be considered within the window. Applicants that wait until the last minute before submitting their applications risk

¹⁵ *Id.*

¹⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁷ See SLD web site, What's New (November 2, 2000)

<<http://www.sl.universalservice.org/whatsnew/112000.asp#110200>>. Scottsdale asserts that the online filing was unavailable starting at 10:00 p.m. Pacific Standard Time on January 18, 2001. Waiver Request. Because there is a three-hour difference between Pacific Standard Time and Eastern Standard Time, and the online filing window closed at 11:59 p.m. Eastern Standard Time, Scottsdale should have experienced the closing of the window at 8:59 p.m. Pacific Standard Time. If, as it claims, it experienced the closing of the window at 10:00 p.m. Pacific Standard Time (or 1:00 a.m. Eastern Standard Time on January 19, 2001), in fact it enjoyed one extra hour for filing. We find that this discrepancy is not material for purposes of this waiver request, because Scottsdale does not claim that the window closed earlier than 11:59 p.m. Eastern Standard Time (or 8:59 p.m. Pacific Standard Time), the closing time for the filing window under the Administrator's rules.

¹⁸ See SLD web site, What's New (November 2, 2000)

<<http://www.sl.universalservice.org/whatsnew/112000.asp#110200>>.

¹⁹ See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. 2000), para. 8.

untimely filing.²⁰ Here, Scottsdale fails to present good cause as to why it could not timely file its application. We therefore find no basis for waiving the filing window deadline.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Waiver Request filed by Scottsdale Horizons School, Scottsdale, Arizona, on March 6, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

²⁰ See, e.g., *Request for Waiver by Stephen-Argyle Central School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-228975, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 15879 (Com. Car. Bur. 2001).